

APPENDIX O: 10 U.S.C. SECTIONS 2873, 2875, 2878, 2879, 2880, 2881, AND 2883

1996 Defense Authorization Act, Public Law 104-106 110 Stat 186

Signed by President Clinton on Saturday, February 10, 1996.

One Hundred Fourth Congress of the United States of America at the Second Session, begun and held at the City of Washington on Wednesday, the third day of January, one thousand nine hundred and ninety-six. S1124 Thurmond S. (R-SC), 01/26/96, (32488 lines), enrolled (finally passed both houses)

An Act

To authorize appropriations for fiscal year 1996 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, to reform acquisition laws and information technology management of the Federal Government, and for other purposes. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE XXVIII--GENERAL PROVISIONS

SUBTITLE A--MILITARY HOUSING PRIVATIZATION INITIATIVE

**SEC. 2801. ALTERNATIVE AUTHORITY FOR CONSTRUCTION AND IMPROVEMENT OF
MILITARY HOUSING.**

(a) ALTERNATIVE AUTHORITY TO CONSTRUCT AND IMPROVE MILITARY HOUSING.--(1)
Chapter 169 of title 10, United States Code, is amended by adding at the end the following new subchapter:

**"SUBCHAPTER IV--ALTERNATIVE AUTHORITY FOR ACQUISITION AND IMPROVEMENT
OF MILITARY HOUSING**

"Sec.

"2871. Definitions.

"2872. General authority.

"2873. Direct loans and loan guarantees.

"2874. Leasing of housing to be constructed.

"2875. Investments in nongovernmental entities.

"2876. Rental guarantees.

"2877. Differential lease payments.

"2878. Conveyance or lease of existing property and facilities.

"2879. Interim leases.

"2880. Unit size and type.

"2881. Ancillary supporting facilities.

Request for Proposals

Solicitation Number F09650-98-R-0207
West Robins Housing Privatization Project, UHHZ 974012

"2882. Assignment of members of the armed forces to housing units.

"2883. Department of Defense Housing Funds.

"2884. Reports.

"2885. Expiration of authority.

"S 2871. DEFINITIONS - "In this subchapter:

1. The term `ancillary supporting facilities' means facilities related to military housing units, including child care centers, day care centers, tot lots, community centers, housing offices, dining facilities, unit offices, and other similar facilities for the support of military housing.
2. The term `base closure law' means the following: "(A) Section 2687 of this title. "(B) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526; 10 U.S.C. 2687 note). "(C) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note).
3. The term `construction' means the construction of military housing units and ancillary supporting facilities or the improvement or rehabilitation of existing units or ancillary supporting facilities.
4. The term `contract' includes any contract, lease, or other agreement entered into under the authority of this subchapter.
5. The term `Fund' means the Department of Defense Family Housing Improvement Fund or the Department of Defense Military Unaccompanied Housing Improvement Fund established under section 2883(a) of this title.
6. The term `military unaccompanied housing' means military housing intended to be occupied by members of the armed forces serving a tour of duty unaccompanied by dependents.
7. The term `United States' includes the Commonwealth of Puerto Rico.

"S 2872. GENERAL AUTHORITY

"In addition to any other authority provided under this chapter for the acquisition or construction of military family housing or military unaccompanied housing, the Secretary concerned may exercise any authority or any combination of authorities provided under this subchapter in order to provide for the acquisition or construction by private persons of the following:

1. Family housing units on or near military installations within the United States and its territories and possessions.
2. Military unaccompanied housing units on or near such military installations.

"S 2873. DIRECT LOANS AND LOAN GUARANTEES

"(a) Direct Loans.--(1) Subject to subsection (c), the Secretary concerned may make direct loans to persons in the private sector in order to provide funds to such persons for the acquisition or construction of housing units that the Secretary determines are suitable for use as military family housing or as military unaccompanied housing.

Request for Proposals

Solicitation Number F09650-98-R-0207
West Robins Housing Privatization Project, UHHZ 974012

"(2) The Secretary concerned shall establish such terms and conditions with respect to loans made under this subsection as the Secretary considers appropriate to protect the interests of the United States, including the period and frequency for repayment of such loans and the obligations of the obligors on such loans upon default.

"(b) Loan Guarantees.--(1) Subject to subsection (c), the Secretary concerned may guarantee a loan made to any person in the private sector if the proceeds of the loan are to be used by the person to acquire, or construct housing units that the Secretary determines are suitable for use as military family housing or as military unaccompanied housing.

"(2) The amount of a guarantee on a loan that may be provided under paragraph (1) may not exceed the amount equal to the lesser of

"(A) the amount equal to 80 percent of the value of the project; or

"(B) the amount of the outstanding principal of the loan.

"(3) The Secretary concerned shall establish such terms and conditions with respect to guarantees of loans under this subsection as the Secretary considers appropriate to protect the interests of the United States, including the rights and obligations of obligors of such loans and the rights and obligations of the United States with respect to such guarantees.

"(c) Limitation on Direct Loan and Guarantee Authority.--Direct loans and loan guarantees may be made under this section only to the extent that appropriations of budget authority to cover their cost (as defined in section 502(5) of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a(5))) are made in advance, or authority is otherwise provided in appropriation Acts. If such appropriation or other authority is provided, there may be established a financing account (as defined in section 502(7) of such Act (2 U.S.C. 661a(7))), which shall be available for the disbursement of direct loans or payment of claims for payment on loan guarantees under this section and for all other cash flows to and from the Government as a result of direct loans and guarantees made under this section.

"S 2874. LEASING OF HOUSING TO BE CONSTRUCTED

"(a) Build And Lease Authorized.--The Secretary concerned may enter into contracts for the lease of military family housing units or military unaccompanied housing units to be constructed under this subchapter.

"(b) Lease Terms.--A contract under this section may be for any period that the Secretary concerned determines appropriate and may provide for the owner of the leased property to operate and maintain the property.

"S 2875. INVESTMENTS IN NONGOVERNMENTAL ENTITIES

"(a) Investments Authorized.--The Secretary concerned may make investments in nongovernmental entities carrying out projects for the acquisition or construction of housing units suitable for use as military family housing or as military unaccompanied housing.

"(b) Forms of Investment.--An investment under this section may take the form of an acquisition of a limited partnership interest by the United States, a purchase of stock or other equity instruments by the United States, a purchase of bonds or other debt instruments by the United States, or any combination of such forms of investment.

Request for Proposals

Solicitation Number F09650-98-R-0207
West Robins Housing Privatization Project, UHHZ 974012

"(c) Limitation on Value of Investment.--(1) The cash amount of an investment under this section in a nongovernmental entity may not exceed an amount equal to $33\frac{1}{3}$ percent of the capital cost (as determined by the Secretary concerned) of the project or projects that the entity proposes to carry out under this section with the investment.

"(2) If the Secretary concerned conveys land or facilities to a nongovernmental entity as all or part of an investment in the entity under this section, the total value of the investment by the Secretary under this section may not exceed an amount equal to 45 percent of the capital cost (as determined by the Secretary) of the project or projects that the entity proposes to carry out under this section with the investment.

"(3) In this subsection, the term 'capital cost', with respect to a project for the acquisition or construction of housing, means the total amount of the costs included in the basis of the housing for Federal income tax purposes.

"(d) Collateral Incentive Agreements.--The Secretary concerned shall enter into collateral incentive agreements with nongovernmental entities in which the Secretary makes an investment under this section to ensure that a suitable preference will be afforded members of the armed forces and their dependents in the lease or purchase, as the case may be, of a reasonable number of the housing units covered by the investment.

"S 2876. RENTAL GUARANTEES

"The Secretary concerned may enter into agreements with private persons that acquire or construct military family housing units or military unaccompanied housing units under this subchapter in order to assure--

- 1 The occupancy of such units at levels specified in the agreements; or
2. Rental income derived from rental of such units at levels specified in the agreements.

"S 2877. DIFFERENTIAL LEASE PAYMENTS

"Pursuant to an agreement entered into by the Secretary concerned and a private lessor of military family housing or military unaccompanied housing to members of the armed forces, the Secretary may pay the lessor an amount in addition to the rental payments for the housing made by the members as the Secretary determines appropriate to encourage the lessor to make the housing available to members of the armed forces as military family housing or as military unaccompanied housing.

"S 2878. CONVEYANCE OR LEASE OF EXISTING PROPERTY AND FACILITIES

"(a) Conveyance or Lease Authorized.--The Secretary concerned may convey or lease property or facilities (including ancillary supporting facilities) to private persons for purposes of using the proceeds of such conveyance or lease to carry out activities under this subchapter.

"(b) Inapplicability To Property At Installation Approved For Closure.--The authority of this section does not apply to property or facilities located on or near a military installation approved for closure under a base closure law.

"(c) Terms and Conditions.--(1) The conveyance or lease of property or facilities under this section shall be for such consideration and upon such terms and conditions as the Secretary concerned

considers appropriate for the purposes of this subchapter and to protect the interests of the United States.

"(2) As part or all of the consideration for a conveyance or lease under this section, the purchaser or lessor (as the case may be) shall enter into an agreement with the Secretary to ensure that a suitable preference will be afforded members of the armed forces and their dependents in the lease or sublease of a reasonable number of the housing units covered by the conveyance or lease, as the case may be, or in the lease of other suitable housing units made available by the purchaser or lessee.

"(d) Inapplicability of Certain Property Management Laws.--The conveyance or lease of property or facilities under this section shall not be subject to the following provisions of law:

1. Section 2667 of this title.
2. The Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.).
3. Section 321 of the Act of June 30, 1932 (commonly known as the Economy Act) (40 U.S.C. 303b).
4. Section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11401).

"S 2879. INTERIM LEASES

"Pending completion of a project to acquire or construct military family housing units or military unaccompanied housing units under this subchapter, the Secretary concerned may provide for the interim lease of such units of the project as are complete. The term of a lease under this section may not extend beyond the date of the completion of the project concerned.

"S 2880. UNIT SIZE AND TYPE

"(a) Conformity with Similar Housing Units In Locale.--The Secretary concerned shall ensure that the room patterns and floor areas of military family housing units and military unaccompanied housing units acquired or constructed under this subchapter are generally comparable to the room patterns and floor areas of similar housing units in the locality concerned.

"(b) Inapplicability of Limitations on Space by Pay Grade.--(1) Section 2826 of this title shall not apply to military family housing units acquired or constructed under this subchapter. (2) The regulations prescribed under section 2856 of this title shall not apply to any military unaccompanied housing unit acquired or constructed under this subchapter unless the unit is located on a military installation.

"S 2881. ANCILLARY SUPPORTING FACILITIES

"Any project for the acquisition or construction of military family housing units or military unaccompanied housing units under this subchapter may include the acquisition or construction of ancillary supporting facilities for the housing units concerned.

"S 2882. ASSIGNMENT OF MEMBERS OF THE ARMED FORCES TO HOUSING UNITS

"(a) In General.--The Secretary concerned may assign members of the armed forces to housing units acquired or constructed under this subchapter.

"(b) Effect of Certain Assignments on Entitlement To Housing Allowances.--(1) Except as provided in paragraph (2), housing referred to in subsection (a) shall be considered as quarters of the United States

Request for Proposals

Solicitation Number F09650-98-R-0207
West Robins Housing Privatization Project, UHHZ 974012

or a housing facility under the jurisdiction of a uniformed service for purposes of section 403(b) of title 37.

"(2) A member of the armed forces who is assigned in accordance with subsection (a) to a housing unit not owned or leased by the United States shall be entitled to a basic allowance for quarters under section 403 of title 37 and, if in a high housing cost area, a variable housing allowance under section 403a of that title.

"(c) Lease Payments Through Pay Allotments.-The Secretary concerned may require members of the armed forces who lease housing in housing units acquired or constructed under this subchapter to make lease payments for such housing pursuant to allotments of the pay of such members under section 701 of title 37.

"S 2883. DEPARTMENT OF DEFENSE HOUSING FUNDS

"(a) Establishment.-There are hereby established on the books of the Treasury the following accounts:

1. The Department of Defense Family Housing Improvement Fund.
2. The Department of Defense Military Unaccompanied Housing Improvement Fund.

"(b) Commingling of Funds Prohibited.--(1) The Secretary of Defense shall administer each Fund separately.

"(2) Amounts in the Department of Defense Family Housing Improvement Fund may be used only to carry out activities under this subchapter with respect to military family housing.

"(3) Amounts in the Department of Defense Military Unaccompanied Housing Improvement Fund may be used only to carry out activities under this subchapter with respect to military unaccompanied housing.

"(c) Credits to Funds.--(1) There shall be credited to the Department of Defense Family Housing Improvement Fund the following:

"(A) Amounts authorized for and appropriated to that Fund. "(B) Subject to subsection (f), any amounts that the Secretary of Defense transfers, in such amounts as provided in appropriation Acts, to that Fund from amounts authorized and appropriated to the Department of Defense for the acquisition or construction of military family housing.

"(C) Proceeds from the conveyance or lease of property or facilities under section 2878 of this title for the purpose of carrying out activities under this subchapter with respect to military family housing. "(D) Income derived from any activities under this subchapter with respect to military family housing, including interest on loans made under section 2873 of this title, income and gains realized from investments under section 2875 of this title, and any return of capital invested as part of such investments.

"(2) There shall be credited to the Department of Defense Military Unaccompanied Housing Improvement Fund the following:

"(A) Amounts authorized for and appropriated to that Fund. "(B) Subject to subsection (f), any amounts that the Secretary of Defense transfers, in such amounts as provided in appropriation Acts, to that Fund from amounts authorized and appropriated to the Department of Defense for the acquisition or construction of military unaccompanied housing. "(C) Proceeds from the conveyance or lease of

Request for Proposals

Solicitation Number F09650-98-R-0207
West Robins Housing Privatization Project, UHHZ 974012

property or facilities under section 2878 of this title for the purpose of carrying out activities under this subchapter with respect to military unaccompanied housing. "(D) Income derived from any activities under this subchapter with respect to military unaccompanied housing, including interest on loans made under section 2873 of this title, income and gains realized from investments under section 2875 of this title, and any return of capital invested as part of such investments.

"(d) Use of Amounts In Funds.--(1) In such amounts as provided in appropriation Acts and except as provided in subsection (e), the Secretary of Defense may use amounts in the Department of Defense Family Housing Improvement Fund to carry out activities under this subchapter with respect to military family housing, including activities required in connection with the planning, execution, and administration of contract entered into under the authority of this subchapter.

"(2) In such amounts as provided in appropriation Acts and except as provided in subsection (e), the Secretary of Defense may use amounts in the Department of Defense Military Unaccompanied Housing Improvement Fund to carry out activities under this subchapter with respect to military unaccompanied housing, including activities required in connection with the planning, execution, and administration of contract entered into under the authority of this subchapter.

"(3) Amounts made available under this subsection shall remain available until expended. The Secretary of Defense may transfer amounts made available under this subsection to the Secretaries of the military departments to permit such Secretaries to carry out the activities for which such amounts may be used.

"(e) Limitation on Obligations.--The Secretary may not incur an obligation under a contract or other agreement entered into under this subchapter in excess of the unobligated balance, at the time the contract is entered into, of the Fund required to be used to satisfy the obligation.

"(f) Notification Required For Transfers.--A transfer of appropriated amounts to a Fund under paragraph (1)(B) or (2)(B) of subsection (c) may be made only after the end of the 30-day period beginning on the date the Secretary of Defense submits written notice of, and justification for, the transfer to the appropriate committees of Congress.

"(g) Limitation on Amount of Budget Authority.--The total value in budget authority of all contract and investments undertaken using the authorities provided in this subchapter shall not exceed--

"(1) \$850,000,000 for the acquisition or construction of military family housing; and

"(2) \$150,000,000 for the acquisition or construction of military unaccompanied housing.

"S 2884. REPORTS

"(a) Project Reports.--(1) The Secretary of Defense shall transmit to the appropriate committees of Congress a report describing-- "(A) each contract for the acquisition or construction of family housing units or unaccompanied housing units that the Secretary proposes to solicit under this subchapter; and "(B) each conveyance or lease proposed under section 2878 of this title.

"(2) The report shall describe the proposed contract, conveyance, or lease and the intended method of participation of the United States in the contract, conveyance, or lease and provide a justification of such method of participation. The report shall be submitted not later than 30 days before the date on which the Secretary issues the contract solicitation or offers the conveyance or lease.

Request for Proposals

Solicitation Number F09650-98-R-0207
West Robins Housing Privatization Project, UHHZ 974012

"(b) Annual Reports.--The Secretary of Defense shall include each year in the materials that the Secretary submits to Congress in support of the budget submitted by the President pursuant to section 1105 of title 31 the following: "(1) A report on the expenditures and receipts during the preceding fiscal year covering the Funds established under section 2883 of this title. "(2) A methodology for evaluating the extent and effectiveness of the use of the authorities under this subchapter during such preceding fiscal year. "(3) A description of the objectives of the Department of Defense for providing military family housing and military unaccompanied housing for members of the armed forces.

"S 2885. EXPIRATION OF AUTHORITY

"The authority to enter into a contract under this subchapter shall expire five years after the date of the enactment of the National Defense Authorization Act for Fiscal Year 1996."

(2) The table of subchapters at the beginning of such chapter is amended by inserting after the item relating to subchapter III the following new item:

"IV. Alternative Authority for Acquisition and Improvement of 2871". Military Housing

(b) Final Report. -- Not later than March 1, 2000, the Secretary of Defense shall submit to the congressional defense committees a report on the use by the Secretary of Defense and the Secretaries of the military departments of the authorities provided by subchapter IV of chapter 169 of title 10, United States Code, as added by subsection (a) The report shall assess the effectiveness of such authority in providing for the construction and improvement of military family housing and military unaccompanied housing.